

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF IOWA

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IN RE: ) Chapter  
 ) Case No. 23-00623 (TJC)  
MERCY HOSPITAL, IOWA CITY, IOWA )  
*et al.*, ) (Jointly Administered)  
 )  
Debtors. )

**OBJECTION OF GERARD ELECTRIC, INC. TO DEBTORS' NOTICE OF  
ASSUMPTION AND ASSIGNMENT OF ADDITIONAL EXECUTORY CONTRACTS  
OR UNEXPIRED LEASES AND CURE COSTS**

Gerard Electric, Inc. ("Gerard Electric"), by and through its undersigned counsel, hereby files this objection (the "Objection") to the *Notice of Assumption and Assignment of Additional Executory Contracts or Unexpired Leases and Cure Costs* dated December 29, 2023 (Docket No. 610) (the "Additional Notice to Assume") filed by the above-captioned Debtors. In support of this Objection, Gerard Electric states:

**BACKGROUND**

1. On August 7, 2023, Debtors filed their voluntary petitions for relief under Chapter 11 of the Bankruptcy Code (the "Petition Date").

2. In Debtors' first Notice to Assume, Debtors identified the following agreement that Gerard Electric is a counterparty to, seeking to assume and assign the following:

Counterparty	Contract Classification	Contract Title	Cure
Gerard Electric, Inc.	Third Party Service Agreement	Invoice No. 1102022 DTD 8/29/2022	\$82,521.10

(Doc. 265, p. 10)

3. In the Additional Notice to Assume, Debtors identify the following two agreements that Gerard Electric is a counterparty to, seeking to potentially assume and assign the following:

Counterparty	Contract Classification	Contract Title	Cure
Gerard Electric, Inc.	Third Party Service Agreement	Invoice No. 1012023	\$0
Gerard Electric, Inc.	Third Party Service Agreement	Invoice No. 1052023, 1062023, and 1072023	\$0

(Doc. 610, p. 6)

4. Pursuant to the Additional Notice to Assume, Gerard Electric objects to the \$0 cure amount identified for these two agreements.

#### **OBJECTION TO CURE AMOUNTS**

5. Section 365(b)(1)(A) requires that “[i]f there has been a default in an executory contract of the debtor, the trustee may not assume such contract unless, at the time of assumption, the trustee cures or provides adequate assurance that the trustee will promptly cure, such default.” 11 U.S.C. 365(b)(1)(A).

6. Debtors’ proposed zero dollar cure amount for both of the Gerard Electric contracts identified in the Additional Notice to Assume fails to satisfy 11 U.S.C. § 365(b)(1)(A).

7. Invoice Nos. 1012023, 1052023, 1062023, and 1072023 relates to the ongoing Agreement between the parties for electric work performed by Gerard Electric at Mercy Hospital (the “Agreement”).

8. As of January 12, 2024, at least \$105,471.10 is due and owing to Gerard Electric under that Agreement, as Debtors have failed to pay at least the last five invoices sent by Gerard Electric.

9. Debtors have listed the cure amount as \$82,521.10 in the initial Notice to Assume. An additional \$22,950.00 is required to cure the default under the two agreements listed in the Additional Notice to Assume.

10. The amounts due and owing under this Agreement are included in unpaid invoice nos. 1052023, 1062023, 1072023, 1082023, 1092023 that have been sent to Debtors. These invoices related to work performed between March 1, 2023 and July 31, 2023.

11. If the Debtors intend to assume the Agreement listed in the second notice, Debtors must pay Gerard Electric an amount due, as of January 12, 2024, of not less than \$22,950.00 in connection with the Agreements listed in Additional Notice.

12. Gerard Electric objects to the assumption of the Agreement unless and until the amounts due and owing under those agreements are paid in full to Gerard Electric.

WHEREFORE, Gerard Electric respectfully requests that its Objection be sustained, that any assumption and assignment of Gerard Electric Service Agreement and Equipment Agreement (as defined herein) be conditioned upon payment in full of the cure amounts identified in this Objection, that the Court order the Debtors to pay the correct cure amounts, and grant Gerard Electric such other and further relief as the Court may deem just and proper.

DATED this 12<sup>th</sup> day of January, 2024.

Gerard Electric, Inc.

MEARDON, SUEPPEL & DOWNER P.L.C.

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ATTORNEYS FOR GERARD ELECTRIC

**CERTIFICATE OF SERVICE**

On this 16<sup>th</sup> day of January, 2024, I served notice of the above and foregoing as follows:

- ☐ electronically filing the foregoing Objection with the Clerk of the Bankruptcy Court using the CM/ECF system which sent notification of such filing to all CM/ECF participants; and
- ☐ via email to the following Notice Parties pursuant to the requirements of the Additional Notice of Assume:
  - Mercy Hospital, Iowa City,  
Iowa c/o ToneyKorf Partners,  
LLC 1595-14 North Central  
Avenue Valley Stream, NY  
11580  
Attn: Marke E. Toney ([mtoney@toneykorf.com](mailto:mtoney@toneykorf.com))  
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  - H2C Securities, Inc.  
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/s/ William J. Sueppel

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